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8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. **2011-535**

12 **KATHY LEE EMEHISER**
13 **13240 Spagnoli Mine Road**
Pine Grove, CA 95665

ACCUSATION

14 **Registered Nurse License No. 430845**

15 Respondent.

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17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her
20 official capacity as the Executive Officer of the Board of Registered Nursing ("Board"),
21 Department of Consumer Affairs.

22 **Registered Nurse License**

23 2. On or about August 31, 1988, the Board issued Registered Nurse License Number
24 430845 to Kathy Lee Emehiser ("Respondent"). The registered nurse license was in full force
25 and effect at all times relevant to the charges brought herein and will expire on January 31, 2012,
26 unless renewed.

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STATUTORY PROVISIONS

3. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

4. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Code section 2811, subdivision (b), the Board may renew an expired license at any time within eight years after the expiration.

5. Code section 2761 states, in pertinent part:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct....,

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

6. Code section 2762 states, in pertinent part:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof.

COST RECOVERY

7. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of

1 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
2 enforcement of the case.

3 **FIRST CAUSE FOR DISCIPLINE**

4 **(Criminal Convictions)**

5 8. Respondent has subjected her license to discipline pursuant to Code section 2761,
6 subdivision (f) in that Respondent has been convicted of the following crimes that are
7 substantially related to the qualifications, functions, and duties of a registered nurse:

8 a. On or about May 15, 2008, in the Superior Court, County of Amador, California,
9 in the matter entitled *People vs. Kathy Lee Emehiser*, 2008, Case No. 08CR13896, Respondent
10 was convicted following her plea of guilty to a violation of Vehicle Code section 23152,
11 subdivision (b) (driving with a blood alcohol level of .08% or more with a prior), a misdemeanor,
12 with special allegations for having a blood alcohol level over .15% and a prior DUI conviction.
13 The circumstances of the crime are that on or about March 3, 2008, the CHP stopped Respondent
14 for a traffic violation. The CHP spoke with Respondent about the traffic stop and noticed
15 Respondent's eyes were red and watery, her speech was slurred, and she appeared confused.
16 Respondent was unable to perform the field sobriety tests as demonstrated. Respondent was
17 arrested and charged with driving under the influence of alcohol. Respondent provided breath
18 samples and each sample measured .222% for alcohol. Respondent also agreed to a blood test
19 which measured her blood alcohol level at .21%.

20 b. On or about May 16, 2003, in the Superior Court, County of Amador, California,
21 in the matter entitled *People vs. Kathy Lee Emehiser*, 2003, Case No. 03CR2841, Respondent was
22 convicted following her plea of no contest to a violation of Vehicle Code section 23152,
23 subdivision (b) (driving with a blood alcohol level of .08%), a misdemeanor. The circumstances
24 of the crime are that on or about December 21, 2002, Respondent was arrested for driving under
25 the influence of alcohol.

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1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Conviction of Crimes Involving Alcohol)**

3 9. Respondent has subjected her license to discipline pursuant to Code section 2761,
4 subdivision (a), on the grounds of unprofessional conduct, as defined by Code section 2762,
5 subdivision (c), in that Respondent has been convicted of crimes involving the consumption of
6 alcohol, as more particularly set forth in paragraph 8, subparagraphs a and b, above.

7 **THIRD CAUSE FOR DISCIPLINE**

8 **(Use Alcohol to an Extent or in a Manner Dangerous or Injurious)**

9 10. Respondent has subjected his license to discipline pursuant to Code section 2761,
10 subdivision (a), on the grounds of unprofessional conduct, as defined in Code section 2762,
11 subdivision (b), in that on or about December 21, 2002, and March 3, 2008, Respondent used
12 alcohol to an extent or in a manner dangerous or injurious to herself or others, as more
13 particularly set forth in paragraph 8, subparagraphs a and b, above.

14 **PRAYER**

15 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
16 and that following the hearing, the Board of Registered Nursing issue a decision:

- 17 1. Revoking or suspending Registered Nurse License Number 430845, issued to Kathy
18 Lee Emehiser;
- 19 2. Ordering Kathy Lee Emehiser to pay the Board of Registered Nursing the reasonable
20 costs of the investigation and enforcement of this case, pursuant to Business and Professions
21 Code section 125.3; and,
- 22 3. Taking such other and further action as deemed necessary and proper.

23 DATED: 12/15/10

24 *Louise R. Bailey*
LOUISE R. BAILEY, M.ED., RN
Executive Officer
25 Board of Registered Nursing
Department of Consumer Affairs
26 State of California
27 Complainant

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